

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH, SITTING
IN AND FOR UTAH COUNTY. No. 2888 Civil.

Provo Reservoir Company,
a corporation Plaintiff,

vs.

Provo City et al. Defendants.

SEPARATE ANSWER OF JOSEPH R.
MURDOCK, TO PLAINTIFF'S COMPLAINT.

Comes now Joseph R. Murdock, one of the defendant named in the above en-
titles action, and by leave of court first had and obtained, files this his
separate answer to plaintiff's complaint on file herein and for answer
admits, denies and alleges as follows, to wit:

1. Defendant admits all of the allegations of paragraphs 1 to 33 in-
clusive and the whole thereof.

2. Answering paragraph 34 of said complaint, defendant admits that the
plaintiff have the right to store the unappropriated waters of Provo river
and to release and recapture the same for the use of itself and its stock-
holders and lessees in so far as such acts do not interfere with the rights
of prior appropriators.

3. Answering paragraph 35 defendant admits the right of plaintiff to
divert water from other sources, store the flood waters of Provo river
and mingle the same with other waters of said Provo river and to recapt-
ure the same for its use and benefit so long as such diversion, storage
and recapture of the same does not interfere with the prior rights of this
defendant. Defendant denies generally and specifically each and every
allegation of said paragraph 35 not herein specifically admitted.

Answering paragraph 36,
4. Defendant admits that he has a right prior in point of time of ap-
propriation, to the plaintiff's right to the use of the waters of Provo
river to the extent of 50 cubic feet per second of flow for power purposes
as hereinafter affirmatively alleged. Defendant denies generally and specif-
ically each and every allegation of said paragraph 36 not herein specif-
ically admitted or denied.

5. Answering paragraph 37 defendant admits the making and the entry
of decrees in the cases of the Wasatch Irrigation Company et al. vs. Ed-
ward Fulton et al. and Provo City et al vs. Telluride Power Transmission
Company et al. as therein alleged but denies generally and specifically
each and every allegation of said paragraph 37 not herein specifically ad-
mitted or denied.

6. Defendant admits the allegations of paragraphs 38 and 39 of said
complaint and every allegation thereof.

7. Further answering said complaint defendant denies generally each and every allegation of said complaint not herein specifically admitted or denied.

For a further answer and defense and by way of counterclaim for affirmative relief defendant alleges as follows, to wit:

I. That prior to the year 1888, defendant appropriated from the then unappropriated waters of Provo river, for power and mill purposes, fifty cubic feet per second flow of the waters of Provo river, and at an expense of a considerable sum of money constructed gates, dams and flumes and also constructed the canal now known as the Charleston Irrigation Company's Lower Canal and a private ditch leading therefrom and used the same to diver and convey said fifty second feet of water from the point of diversion, to his power and mill site located on said Provo river near the dividing line running East and West between Sections 11 and 14, in Township Four South of Range Four East Salt Lake Meridian.

II. That during each and every year since said year 1888 thenceforward the defendant has openly, peaceably, continuously, notoriously and uninterruptedly used and now is so using said fifty second feet of water for power and mill purposes, from January, 1st, to December, 31st, and by reason of prior appropriation and use as aforesaid has acquired a right therein and thereto to so use said water as aforesaid.

III. That after using said water as aforesaid at said power and mill site the same is conveyed by means of a tail race leading from said power site to and is discharged into said Provo river at or near said place of use, without material loss in transmission and use.

IV. That defendant's said use of said water does not and cannot in any manner interfere with the rights of any other person claiming and using the water of Provo river for the reason that little or no water is diverted from said Provo river between defendant's point of diversion and the point where defendant returns said water to said Provo river after the use thereof for power purposes as aforesaid.

V. That defendant further alleges that the claim of the plaintiff in this action, as against this defendant, is without foundation or right and is a cloud upon the title of this defendant to said quantity of water.

WHEREFORE, this defendant prays judgment that his rights to fifty cubic feet per second flow of the waters of Provo river claimed and used by him as above set forth be adjudicated and determined and that he be decreed to be the owner and have the use thereof for power and mill purposes as against the plaintiff and all other persons in any manner claiming or asserting any right whatever thereto adverse to him; that he further be decreed the right to divert said water from Provo river at the present point of diversion, to wit, the intake of the so called Charleston Irrigation Company's Lower Canal and convey the same along said canal and the private ditch leading therefrom to his power and mill site as now located and there use the same for power and mill purposes during each and every year from January, 1st to December, 31st, and after said use to be conveyed directly to and discharged into said Provo river near said site.

That the plaintiff and all other persons be enjoined and restrained from in any manner asserting any right or claim of right whatsoever to said water or any portion thereof adverse to this defendant to the extent of his appropriation and use as aforesaid.

This defendant prays for such other and further relief as may be just and equitable and for his costs herein expended.

W. J. Sullivan
 Attorney for Defendant
 Joseph R. Murdock.

State of Utah,

ss.

County of Wasatch.

Joseph R. Murdock being first duly sworn on oath says, that he is the person named in the foregoing answer as defendant; that he has read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge except as to matters therein stated upon information and belief and as to those matters he verily believes it to be true.

Subscribed and sworn to before me this 27 day of December, A.D. 1916.

My commission expires
 January 5th, 1918.

Joseph R. Murdock
E. J. Palfreyman
 Notary Public.



*Service foregoing answer hereby
 accepted this 27th Dec 1916
 A. B. Hatch and the
 attys. for Plaintiff*

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Prof. [unclear]

Prof. [unclear]

Amos J. [unclear]

IN DIST. COURT

UTAH CO., UTAH,

* FILED *

DEC 20 1916

[Signature] Clerk.

[Signature] Deputy.